

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DARNELL QUEEN,)	
)	
Petitioner, <i>pro se</i> ,)	MEMORANDUM OPINION
)	AND RECOMMENDATION
v.)	
)	
SHERIFF B. J. BARNES,)	1:10CV41
)	
Respondent.)	

Plaintiff, Darnell Queen, brought this civil rights action under 42 U.S.C. § 1983. In his complaint he alleged that Defendant was responsible for maintaining the Guilford County Jail, where Plaintiff was housed at the time of filing, in such a state of overcrowding that it caused Plaintiff to be assaulted by other inmates. The complaint also stated that Plaintiff was denied proper medical treatment after the assault. Plaintiff also alleged that Defendant allowed such filthy conditions to exist in the Jail that Plaintiff suffered sickness and stomach problems which caused him to vomit blood (docket no. 2, § V).

After further filings by the parties, the court entered an Order on February 16, 2011, in which it found that it appeared that Plaintiff had not exhausted all of his administrative remedies as to the claims raised in the complaint. The court then gave Plaintiff the opportunity to clarify the exhaustion issue by filing, under penalty of perjury, “a statement as to whether or not he exhausted or attempted to exhaust any of his claims” (docket no. 32 at 7). He was specifically warned that “[f]ailure to

file such a statement will result in the dismissal of this action for failure to exhaust administrative remedies” (*id.* at 8-9). After an initial attempt at mailing the prior Order to Plaintiff was returned as undeliverable, a second mailing was made to an updated address. Despite the passage of more than three months since the second mailing, Plaintiff has not filed a statement or requested more time to do so. In fact, he has not responded to the Order in any way. Therefore, for the reasons set out in the court’s Order of February 16, 2011, this case should be dismissed.

IT IS THEREFORE RECOMMENDED that this case be dismissed based on Plaintiff’s failure to exhaust administrative remedies as discussed in the Order entered on February 16, 2011. All pending motions in the case should be terminated, and the action should be closed.

A handwritten signature in black ink, appearing to read "Wallace W. Dixon", written over a horizontal line.

WALLACE W. DIXON
United States Magistrate Judge

Durham, N.C.
June 29, 2011